

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0976.01 Yelana Love x2295

SENATE BILL 19-201

SENATE SPONSORSHIP

Pettersen, Tate

HOUSE SPONSORSHIP

Tipper and McKean,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF A PROCESS BY WHICH CERTAIN**
102 **PARTIES TO AN ADVERSE HEALTH CARE INCIDENT MAY DISCUSS**
103 **POTENTIAL OUTCOMES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates the "Colorado Candor Act" (Act). The Act establishes a process for the communication between a patient and a health care provider or health facility after an adverse health care incident. The bill provides that the communications under the Act are privileged and confidential, are inadmissible as evidence in any

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 (4) "OPEN DISCUSSION" MEANS ALL COMMUNICATIONS THAT ARE
2 MADE UNDER SECTION 25-51-103 AND INCLUDES ALL MEMORANDA, WORK
3 PRODUCT, DOCUMENTS, AND OTHER MATERIALS THAT ARE PREPARED FOR,
4 OR SUBMITTED IN THE COURSE OF OR IN CONNECTION WITH,
5 COMMUNICATIONS UNDER SECTION 25-51-103.

6 (5) "PATIENT" MEANS A PERSON WHO RECEIVES HEALTH CARE
7 FROM A HEALTH CARE PROVIDER, OR THE PERSON'S LEGAL
8 REPRESENTATIVE IF THE PERSON IS AN UNEMANCIPATED MINOR UNDER THE
9 AGE OF EIGHTEEN, DECEASED, OR INCAPACITATED. "PATIENT" INCLUDES
10 THE PARTIES RECOGNIZED UNDER SECTION 13-21-201.

11 (6) "PUBLIC EMPLOYEE" HAS THE SAME MEANING AS IN SECTION
12 24-10-103 (4).

13 (7) "PUBLIC ENTITY" HAS THE SAME MEANING AS IN SECTION
14 24-10-103 (5).

15 **25-51-103. Engaging in an open discussion.** (1) IF AN ADVERSE
16 HEALTH CARE INCIDENT OCCURS, A HEALTH CARE PROVIDER INVOLVED IN
17 THE ADVERSE HEALTH CARE INCIDENT, OR THE HEALTH CARE PROVIDER
18 JOINTLY WITH THE HEALTH FACILITY INVOLVED IN THE ADVERSE HEALTH
19 CARE INCIDENT, MAY PROVIDE THE PATIENT WITH WRITTEN NOTICE OF THE
20 DESIRE OF THE HEALTH CARE PROVIDER, OR OF THE HEALTH CARE
21 PROVIDER JOINTLY WITH THE HEALTH FACILITY, TO ENTER INTO AN OPEN
22 DISCUSSION UNDER THIS ARTICLE 51.

23 (2) A HEALTH CARE PROVIDER OR HEALTH FACILITY THAT CHOOSES
24 TO PROVIDE THE NOTICE SPECIFIED IN SUBSECTION (1) OF THIS SECTION
25 SHALL SEND THE NOTICE WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE
26 DATE ON WHICH THE HEALTH CARE PROVIDER KNEW, OR THROUGH THE USE
27 OF DILIGENCE SHOULD HAVE KNOWN, OF THE ADVERSE HEALTH CARE

1 INCIDENT. THE NOTICE MUST INCLUDE:

2 (a) AN EXPLANATION OF THE PATIENT'S RIGHT TO RECEIVE A COPY
3 OF THE MEDICAL RECORDS RELATED TO THE ADVERSE HEALTH CARE
4 INCIDENT AND OF THE PATIENT'S RIGHT TO AUTHORIZE THE RELEASE OF
5 THE PATIENT'S MEDICAL RECORDS RELATED TO THE ADVERSE HEALTH
6 CARE INCIDENT TO ANY THIRD PARTY;

7 (b) A STATEMENT REGARDING THE PATIENT'S RIGHT TO SEEK
8 LEGAL COUNSEL AND TO HAVE LEGAL COUNSEL PRESENT THROUGHOUT
9 THE PROCESS SPECIFIED IN THIS ARTICLE 51;

10 (c) A COPY OF SECTIONS 13-80-102.5 AND 13-80-112 WITH NOTICE
11 THAT THE TIME FOR A PATIENT TO BRING A LAWSUIT IS LIMITED AND WILL
12 NOT BE EXTENDED MERELY BY ENGAGING IN AN OPEN DISCUSSION UNDER
13 THIS ARTICLE 51;

14 (d) IF THE HEALTH CARE PROVIDER OR HEALTH FACILITY IS A
15 PUBLIC ENTITY OR A PUBLIC EMPLOYEE, A COPY OF SECTION 24-10-109,
16 TOGETHER WITH THE STATEMENT THAT THE DEADLINE FOR FILING THE
17 NOTICE REQUIRED UNDER SECTION 24-10-109 WILL NOT BE EXTENDED
18 MERELY BY ENGAGING IN AN OPEN DISCUSSION UNDER THIS ARTICLE 51;

19 (e) NOTICE THAT IF THE PATIENT CHOOSES TO ENGAGE IN AN OPEN
20 DISCUSSION WITH THE HEALTH CARE PROVIDER OR HEALTH FACILITY, ALL
21 COMMUNICATIONS MADE IN THE COURSE OF THE DISCUSSION UNDER THIS
22 ARTICLE 51, INCLUDING COMMUNICATIONS REGARDING THE INITIATION OF
23 AN OPEN DISCUSSION, ARE:

24 (I) PRIVILEGED AND CONFIDENTIAL;

25 (II) NOT SUBJECT TO DISCOVERY, SUBPOENA, OR OTHER MEANS OF
26 LEGAL COMPULSION FOR RELEASE; AND

27 (III) NOT ADMISSIBLE AS EVIDENCE IN A JUDICIAL,

1 ADMINISTRATIVE, OR ARBITRATION PROCEEDING; AND

2 (f) AN ADVISEMENT THAT COMMUNICATIONS, MEMORANDA, WORK
3 PRODUCT, DOCUMENTS, AND OTHER MATERIALS THAT WERE OTHERWISE
4 SUBJECT TO DISCOVERY AND NOT PREPARED SPECIFICALLY FOR USE IN AN
5 OPEN DISCUSSION UNDER THIS SECTION ARE NOT CONFIDENTIAL.

6 (3) (a) IF THE PATIENT AGREES IN WRITING TO ENGAGE IN AN OPEN
7 DISCUSSION UNDER THIS ARTICLE 51, THE PATIENT, HEALTH CARE
8 PROVIDER, OR HEALTH FACILITY ENGAGED IN THE OPEN DISCUSSION MAY
9 INCLUDE ADDITIONAL PARTIES IN THE OPEN DISCUSSION.

10 (b) THE HEALTH CARE PROVIDER, OR THE HEALTH CARE PROVIDER
11 JOINTLY WITH THE HEALTH FACILITY, INVOLVED IN THE ADVERSE HEALTH
12 CARE INCIDENT SHALL ADVISE ALL ADDITIONAL PARTIES IN WRITING OF
13 THE NATURE OF COMMUNICATIONS MADE IN ACCORDANCE WITH THIS
14 ARTICLE 51 AS SPECIFIED IN SECTION 25-51-105.

15 (c) ADDITIONAL PARTIES SHALL ACKNOWLEDGE THE ADVISEMENT
16 IN SUBSECTION (3)(b) OF THIS SECTION IN WRITING.

17 (d) THE ADVISEMENT PROVIDED IN ACCORDANCE WITH THIS
18 SUBSECTION (3) MUST INDICATE THAT COMMUNICATIONS, MEMORANDA,
19 WORK PRODUCT, DOCUMENTS, AND OTHER MATERIALS THAT WERE
20 OTHERWISE SUBJECT TO DISCOVERY AND NOT PREPARED SPECIFICALLY FOR
21 USE IN AN OPEN DISCUSSION UNDER THIS SECTION ARE NOT CONFIDENTIAL.

22 (4) THE HEALTH CARE PROVIDER OR HEALTH FACILITY THAT
23 AGREES TO ENGAGE IN AN OPEN DISCUSSION MAY:

24 (a) INVESTIGATE HOW THE ADVERSE HEALTH CARE INCIDENT
25 OCCURRED AND GATHER INFORMATION REGARDING THE MEDICAL CARE OR
26 TREATMENT PROVIDED;

27 (b) DISCLOSE THE RESULTS OF THE INVESTIGATION TO THE

1 PATIENT;

2 (c) OPENLY COMMUNICATE TO THE PATIENT THE STEPS THE
3 HEALTH CARE PROVIDER OR HEALTH FACILITY WILL TAKE TO PREVENT
4 FUTURE OCCURRENCES OF THE ADVERSE HEALTH CARE INCIDENT;

5 (d) DETERMINE EITHER OF THE FOLLOWING:

6 (I) THAT NO OFFER OF COMPENSATION FOR THE ADVERSE HEALTH
7 CARE INCIDENT IS WARRANTED; OR

8 (II) THAT AN OFFER OF COMPENSATION FOR THE ADVERSE HEALTH
9 CARE INCIDENT IS WARRANTED.

10 (5) IF A HEALTH CARE PROVIDER OR HEALTH FACILITY DETERMINES
11 THAT NO OFFER OF COMPENSATION IS WARRANTED, THE HEALTH CARE
12 PROVIDER OR HEALTH FACILITY SHALL ORALLY COMMUNICATE THAT
13 DECISION WITH THE PATIENT. IF A HEALTH CARE PROVIDER OR HEALTH
14 FACILITY DETERMINES THAT AN OFFER OF COMPENSATION IS WARRANTED,
15 THE HEALTH CARE PROVIDER OR HEALTH FACILITY SHALL PROVIDE THE
16 PATIENT WITH A WRITTEN OFFER OF COMPENSATION.

17 (6) IF A HEALTH CARE PROVIDER OR HEALTH FACILITY MAKES AN
18 OFFER OF COMPENSATION UNDER SUBSECTION (5) OF THIS SECTION AND
19 THE PATIENT IS NOT REPRESENTED BY LEGAL COUNSEL, THE HEALTH CARE
20 PROVIDER OR HEALTH FACILITY SHALL:

21 (a) ADVISE THE PATIENT OF THE PATIENT'S RIGHT TO SEEK LEGAL
22 COUNSEL REGARDING THE OFFER OF COMPENSATION; AND

23 (b) PROVIDE NOTICE THAT THE PATIENT MAY BE LEGALLY
24 REQUIRED TO REPAY MEDICAL AND OTHER EXPENSES THAT WERE PAID BY
25 A THIRD PARTY, INCLUDING PRIVATE HEALTH INSURANCE, MEDICARE, OR
26 MEDICAID.

27 (7) EXCEPT FOR AN OFFER OF COMPENSATION UNDER SUBSECTION

1 (5) OF THIS SECTION, OPEN DISCUSSIONS BETWEEN THE HEALTH CARE
2 PROVIDER OR HEALTH FACILITY AND THE PATIENT ABOUT THE
3 COMPENSATION OFFERED UNDER SUBSECTION (5) OF THIS SECTION SHALL
4 NOT BE IN WRITING.

5 **25-51-104. Payment and financial resolution.** (1) IF A PATIENT
6 ACCEPTS AN OFFER OF COMPENSATION MADE PURSUANT TO SECTION
7 25-51-103 (5) AND RECEIVES THE COMPENSATION, THE PAYMENT OF
8 COMPENSATION TO THE PATIENT IS NOT A PAYMENT RESULTING FROM:

9 (a) A WRITTEN CLAIM OR DEMAND FOR PAYMENT;

10 (b) A FINAL JUDGMENT, SETTLEMENT, OR ARBITRATION AWARD
11 AGAINST A HEALTH CARE PROFESSIONAL OR HEALTH CARE INSTITUTION
12 FOR MEDICAL MALPRACTICE FOR PURPOSES OF SECTION 13-64-303;

13 (c) A MALPRACTICE CLAIM SETTLED OR IN WHICH JUDGMENT IS
14 RENDERED AGAINST A PROFESSIONAL FOR PURPOSES OF REPORTING BY
15 MALPRACTICE INSURANCE COMPANIES UNDER SECTION 10-1-120,
16 10-1-121, 10-1-124, 10-1-125, OR 10-1-125.5;

17 (d) A FINAL JUDGMENT AGAINST, SETTLEMENT ENTERED INTO BY,
18 OR ARBITRATION AWARD PAID ON BEHALF OF AN APPLICANT FOR
19 MALPRACTICE UNDER SECTION 24-34-110 (4)(h); OR

20 (e) A JUDGMENT, ADMINISTRATIVE ACTION, SETTLEMENT, OR
21 ARBITRATION AWARD INVOLVING MALPRACTICE UNDER SECTION
22 12-29.5-104 (5)(a), 12-29.9-104 (5), 12-32-108.3 (2)(b)(III), 12-33-117
23 (1)(j), 12-35-129 (1)(q) OR (1)(r), 12-35.5-111 (1)(i), 12-36-118
24 (4)(b)(III), 12-37.3-114.5, 12-38-116.5 (3)(b)(II), 12-40-118 (1)(r) OR
25 (1)(y), 12-40-127, 12-41-115 (1)(o), 12-41-120 (1)(a), 12-41-210 (1)(k),
26 12-41-215 (1)(a), 12-42.5-109 (1), OR 12-43-224 (8).

27 (2) AS A CONDITION OF AN OFFER OF COMPENSATION UNDER

1 SECTION 25-51-103 (5), A HEALTH CARE PROVIDER OR HEALTH FACILITY
2 MAY REQUIRE A PERSON WHO IS ACTING AS A LEGAL REPRESENTATIVE OF
3 AN UNEMANCIPATED MINOR OR INCAPACITATED ADULT TO EXECUTE ALL
4 DOCUMENTS AND OBTAIN ANY NECESSARY COURT APPROVAL TO RESOLVE
5 AN ADVERSE HEALTH CARE INCIDENT. THE PARTIES SHALL NEGOTIATE THE
6 FORM OF THE DOCUMENTS OR OBTAIN COURT APPROVAL AS NECESSARY.

7 **25-51-105. Confidentiality of open discussions and offers of**
8 **compensation.** (1) OPEN DISCUSSION COMMUNICATIONS AND OFFERS OF
9 COMPENSATION MADE UNDER SECTION 25-51-103 AND IN SUBSTANTIAL
10 COMPLIANCE WITH THIS ARTICLE 51:

11 (a) DO NOT CONSTITUTE AN ADMISSION OF LIABILITY;

12 (b) ARE PRIVILEGED AND CONFIDENTIAL AND SHALL NOT BE
13 DISCLOSED;

14 (c) ARE NOT ADMISSIBLE AS EVIDENCE IN ANY SUBSEQUENT
15 JUDICIAL, ADMINISTRATIVE, OR ARBITRATION PROCEEDING ARISING
16 DIRECTLY OUT OF THE ADVERSE HEALTH CARE INCIDENT;

17 (d) ARE NOT SUBJECT TO DISCOVERY, SUBPOENA, OR OTHER MEANS
18 OF LEGAL COMPULSION FOR RELEASE; AND

19 (e) SHALL NOT BE DISCLOSED BY ANY PARTY IN ANY SUBSEQUENT
20 JUDICIAL, ADMINISTRATIVE, OR ARBITRATION PROCEEDING ARISING
21 DIRECTLY OUT OF THE ADVERSE HEALTH CARE INCIDENT.

22 (2) COMMUNICATIONS, MEMORANDA, WORK PRODUCT,
23 DOCUMENTS, AND OTHER MATERIALS THAT ARE OTHERWISE SUBJECT TO
24 DISCOVERY AND THAT WERE NOT PREPARED SPECIFICALLY FOR USE IN AN
25 OPEN DISCUSSION UNDER SECTION 25-51-103 ARE NOT CONFIDENTIAL.

26 (3) THE LIMITATION ON DISCLOSURE IMPOSED BY THIS SECTION
27 INCLUDES DISCLOSURE DURING ANY DISCOVERY CONDUCTED AS PART OF

1 A SUBSEQUENT ADJUDICATORY PROCEEDING, AND A COURT OR OTHER
2 ADJUDICATORY BODY SHALL NOT COMPEL ANY PERSON WHO ENGAGES IN
3 AN OPEN DISCUSSION UNDER THIS ARTICLE 51 TO DISCLOSE CONFIDENTIAL
4 COMMUNICATIONS OR AGREEMENTS MADE UNDER SECTION 25-51-103.

5 (4) THIS SECTION DOES NOT AFFECT ANY OTHER LAW, RULE, OR
6 REQUIREMENT WITH RESPECT TO CONFIDENTIALITY.

7 **25-51-106. Patient safety research and education.** (1) A
8 HEALTH CARE PROVIDER OR HEALTH FACILITY THAT PARTICIPATES IN OPEN
9 DISCUSSIONS UNDER THIS ARTICLE 51 MAY PROVIDE DE-IDENTIFIED
10 INFORMATION ABOUT AN ADVERSE HEALTH CARE INCIDENT TO ANY
11 PATIENT-SAFETY-CENTERED NONPROFIT ORGANIZATION FOR USE IN
12 PATIENT SAFETY RESEARCH AND EDUCATION.

13 (2) DISCLOSURE OF DE-IDENTIFIED INFORMATION UNDER
14 SUBSECTION (1) OF THIS SECTION:

15 (a) DOES NOT CONSTITUTE A WAIVER OF THE PRIVILEGE SPECIFIED
16 IN SECTION 25-51-105 (1)(b); AND

17 (b) IS NOT A VIOLATION OF THE CONFIDENTIALITY REQUIREMENTS
18 OF SECTION 25-51-105 (1)(b).

19 **SECTION 2. Effective date - applicability.** This act takes effect
20 July 1, 2019, and applies to conduct occurring on or after said date.

21 **SECTION 3. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.